

State Notes

TOPICS OF LEGISLATIVE INTEREST

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Mental Health Courts: A New Tool **By Stephanie Yu, Fiscal Analyst**

For fiscal year (FY) 2008-09, appropriations for the Judiciary and the Department of Community Health (DCH) include funding for a mental health court pilot program. Boilerplate language charges the two to work together to establish pilot sites as well as guidelines and practices. For this purpose, \$550,000 is appropriated in the Judiciary budget, and \$1.1 million in the DCH budget. Although the division is not explicit, it is likely that the funding for the DCH will cover personnel and treatment costs for each pilot site, and the funding for the Judiciary will support court personnel and other costs.

Background

The percentage of mentally ill individuals in jail and prison is greater than that in the general population, and this disparity has increased over the last 20 years. Mental health courts have developed as one way of addressing this imbalance. These courts are similar in concept to drug treatment courts. Essentially, the idea is to divert mentally ill defendants into treatment programs overseen by judges rather than sending those defendants to jail or prison. The programs are intended to facilitate cooperation between the courts and community-based mental health service providers, and effectively reduce jail and prison populations. As in the case of drug treatment courts, these diversion programs are considered a more cost-effective way to handle mentally ill defendants, particularly through the reduction of recidivism rates. Program participants have regular hearings in front of the judges, and their progress through the program and cooperation with treatment are carefully monitored by a caseworker and a team that includes representatives from the court and mental health service providers, as well as the prosecutor's office and defense counsel. Often, there are sanctions and rewards applied to facilitate compliance with treatment programs. Generally, these courts limit participation to nonviolent offenders, and include minimum thresholds for the length of potential sentences to ensure cost-effectiveness.

Proposals and State Funding in Michigan

Beginning in FY 2007-08, proposals for mental health courts have been considered in the Judiciary and Community Health budgets in Michigan. Though the budget for this year does not include any funding for these courts, boilerplate language required that the Judiciary consider strategies for responding to defendants with mental illness. Section 316 of Public Act 125 of 2007 reads as follows:

Sec. 316. The state court administrative office shall evaluate various strategies for court systems to use to better respond to defendants with mental illnesses. Such strategies may include, but not be limited to, mental health treatment courts, dedicated probation caseloads for people with mental illnesses, specialized pretrial release programs, and court-based diversion programs. The evaluation should consider the full range of problems that occur when people with mental illnesses enter the criminal justice system and factors such as key stakeholders, eligibility criteria, case processing, treatment options, funding sources, and disposition of cases upon program completion.

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The Executive Recommendation for FY 2008-09 included funding of \$1.1 million in the Judiciary budget and \$2.3 million in the Community Health budget for mental health courts. Boilerplate included in the Executive-recommended Judiciary budget proposed a pilot program:

Sec. 309. (1) From the funds appropriated in part 1 for pilot mental health court programs, with the approval of and at the discretion of the supreme court, the state court administrative office shall work with the department of community health to develop guidelines for the operation and evaluation of pilot mental health courts. Trial courts and local community mental health services programs interested in becoming mental health court pilot sites shall submit a joint application for funding prepared in accordance with guidelines established by the Judiciary and the department of community health. The applications shall include documentation of community needs and a commitment to the program by key stakeholders, including the local courts, law enforcement, prosecutor, defense counsel, and treatment providers.

(2) From the funds appropriated in part for pilot mental health court programs, \$100,000.00 shall be used to provide training for mental health court personnel and local law enforcement on mental health issues.

Ultimately, the enacted budgets for the Judiciary and DCH reduced the recommended funding by 50.0%, to \$550,000 for the Judiciary and \$1.1 million for the DCH. Presumably, this will allow for two or three pilot sites statewide. Treatment costs per individual are expected to be approximately \$10,000 per year, though the length of the program has not been determined. Boilerplate language in the enacted Judiciary budget (Public Act 250 of 2008) modified the Governor's proposal to expand the list of stakeholders and provide for consideration of Federal guidelines:

Sec. 309. (1) From the funds appropriated in part 1 for pilot mental health court programs, with the approval of and at the discretion of the supreme court, the state court administrative office shall work with the department of community health to develop guiding protocols and principles to assist local courts in developing practices for mental health treatment courts. When developing the guiding protocols and principles, consideration should be given to the 10 essential elements as defined by the U.S. bureau of justice assistance.

(2) The legislature encourages the state court administrative office to develop mental health court guidelines in cooperation with all key stakeholders, including, but not limited to, circuit, district, and probate court judges, county prosecuting attorneys, representatives of the criminal defense bar, representatives of community treatment providers, community mental health service providers, any other prosecutor in the circuit or district court district, local law enforcement, the probation departments, the local substance abuse coordinating agencies, domestic violence service provider programs that receive funding from the state domestic violence prevention and treatment board, and community corrections agencies, as well as any other parties considered necessary. The state court administrative office is also encouraged to develop guidelines comparable to those established for drug treatment



courts, found in chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.

(3) Trial courts and local community mental health services programs interested in becoming mental health court pilot sites shall submit a joint application for funding prepared in accordance with guidelines established by the judiciary and the department of community health. The applications shall include documentation of community needs and a commitment to the program by key stakeholders, including the local courts, law enforcement, prosecutor, defense counsel, and treatment providers.

In addition to these statewide initiatives, there have been efforts at the local level to create mental health courts. Genesee County Probate Court has begun to focus on sending mentally ill defendants charged with minor crimes to treatment programs, rather than jail. Additionally, juvenile drug treatment courts in Kalamazoo, Macomb, and Oakland counties work to address co-occurring mental illnesses as part of their treatment programs and are overseen by the Bureau of Juvenile Justice in the Department of Human Services.

Courts throughout the U.S. and Federal Involvement

According to the U.S. Bureau of Justice Assistance (BJA), there are 150 mental health courts currently operating nationwide, with many more programs in development. California and Ohio have the greatest number of courts. These courts vary considerably in funding structures and conditions, as well as the number of participants served. Approximately two-fifths of these courts require guilty pleas, and one-third limit defendants to those charged with misdemeanors. Additionally, many limit the types of mental disorders that are eligible to Axis 1 disorders as defined by the American Psychiatric Association, which include mood disorders such as depression, bipolar disorder, and schizophrenia.

In conjunction with the Council of State Governments, the BJA has established five mental health court learning sites, in Georgia, Idaho, Nevada, New York, and Ohio, four of which received grants from the BJA. The number of participants in these courts ranges from 35 in Idaho to 225 in New York. Each court has slightly different criteria for participation. While New York and Idaho target individuals facing felony charges with lengthy criminal records, the Georgia court is a dual mental health and drug court, and focuses on those individuals with co-occurring disorders who have committed multiple offenses over time. The Ohio and Nevada courts are less specific, but Ohio sets a 60-day potential jail sentence as a minimum for eligibility. Several of the courts limit access to participation based on the type of mental illness, and New York, unlike most programs, allows violent offenders to participate. As learning sites, these programs serve as models for developing mental health courts. As mentioned above, the BJA also has established 10 essential elements for mental health courts, which address such issues as the key stakeholders, the terms of participation, confidentiality, and sustainability. The full list and descriptions can be found in [Appendix A](#).

As mentioned above, four of these five sites received Federal grants for the mental health courts, but all of them are working to obtain community support to sustain these programs. The future of Federal funding for these courts is unclear. Federal funding received in Michigan for drug treatments courts has been drastically reduced over the last several years, and it is



uncertain whether there will be an expansion of funding for mental health courts in the near future. The funding included in FY 2008-09 will allow for a pilot program, but for long-term sustainability, Federal and local resources, including Medicaid eligibility, will need to be explored.

Results

Mental health courts are relatively new, and there is little information available about actual cost savings. Studies that have been done reflect minor improvements in recidivism rates, but they tend to have small sample sizes and may or may not use a control group. Several of these studies compare arrest records prior to treatment with records after treatment to measure improvement. Similar to the evaluation of drug treatment courts, studies of cost savings are complicated by the need to compare actual savings with assumed savings, that is, those costs that would have been incurred had the defendant not been diverted, related to both the current case and potential future charges. Given that many individuals with mental illness deteriorate over time without treatment, future contact with the criminal justice system is difficult to predict accurately. However, a recent RAND study¹ of a Pennsylvania mental health court found that over time, the mental health court did achieve savings in jail and prison costs. The study compared the costs associated with the mental health court, including court costs, treatment costs and cash assistance payments, with the costs that would have been incurred had the defendant not been diverted, including adjudication costs and jail or prison costs in the particular case before the court. The study found that treatment costs increased in the first year, but leveled off in subsequent years, while incarceration savings continued to accrue due to a sustained decline in jail and prison time.

Other Considerations

As Michigan's pilot program begins, and the Judiciary and DCH put together guidelines and practices for these courts, there are a number of issues to be addressed. As mentioned above, some drug treatment courts do address mental illness, and how mental health courts will interact with existing services needs to be determined. Additionally, the role of probate judges is unclear. Probate courts handle issues of competence for trial and petitions for involuntary mental health treatment, and those responsibilities might broaden or change to accommodate mental health courts. In an article endorsed by the Michigan Probate Judges' Association², Judge Mack of Wayne County argues for broadening probate judges' authority to order involuntary treatment. Mack suggests that current law requires individuals to be at a "crisis point" before involuntary treatment can be ordered and points out that guardians are not authorized to commit their wards to treatment for mental illness, unlike with other health issues. While he acknowledges that mental health courts may be part of the solution, the article is based on the premise that earlier intervention may prevent many of these individuals from coming into contact with the criminal justice system in the first place. Another broad

¹ Ridgely, S. et al. (2007). Justice, Treatment, and Cost An Evaluation of the Fiscal Impact of Allegheny County Mental Health Court. Retrieved August 15, 2008 from http://www.rand.org/pubs/technical_reports/2007/RAND_TR439.pdf

² Mack, M. L. (2008). Involuntary Treatment for the Twenty-First Century. *The Quinipiac Probate Law Journal*, 21 (3 & 4), 294-320.

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concern is training for law enforcement. The Executive Recommendation for the FY 2008-09 budget stipulated that \$100,000 of the funding for the pilot program be used to train law enforcement and court personnel in mental health awareness, but this was not included in the enacted bill. The appropriations for the Department of Corrections in FY 2007-08 and FY 2008-09 included \$100,000 per year for an interdepartmental grant to the Department of State Police for mental health training for law enforcement. These initiatives suggest that mental health courts are part of a broader effort to address the handling of mentally ill defendants throughout the criminal justice system. These additional costs and measures, as well as other measures that may be necessary or useful, should be taken into consideration as mental health courts are developed.

Conclusion

As the mental health court pilot program begins in Michigan in FY 2008-09, there are many issues to consider. Sustainable funding is necessary, and as has been the case with drug treatment courts, Federal funding can fluctuate from year to year. Determining how these courts interact with drug treatment courts and probate courts also will be important. The State Court Administrative Office and the Department of Community Health will work together to choose sites for this program and determine its structure and conditions. This effort likely will include considering the types of offenses that will be eligible, whether based on potential sentences or other criteria, whether there will be limitations on the types of mental illness suffered by the participants, how to ensure informed consent among participants, as well as the staff and training that are necessary. Over the next fiscal year, the pilot program will attempt to address many of these questions. Mental health courts are a new tool in Michigan, and determining how best to use them will be an ongoing process.



Attachment A

Essential Elements of a Mental Health Court, U.S. Bureau of Justice Assistance

- (a) **Planning and administration:** A broad-based group of stakeholders representing the criminal justice, mental health, substance abuse treatment, and related systems and the community guides the planning and administration of the court.
- (b) **Target population:** Eligibility criteria address public safety and consider a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses. Eligibility criteria also take into account the relationship between mental illness and a defendant's offenses, while allowing the individual circumstances of each case to be considered.
- (c) **Timely participant identification and linkage to services:** Participants are identified, referred and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.
- (d) **Terms of participation:** Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that the defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.
- (e) **Informed choice:** Defendants fully understand the program requirements before agreeing to participate in a mental health court. They are provided legal counsel to inform this decision and subsequent decisions about program involvement. Procedures exist in the mental health court to address, in a timely fashion, concerns about a defendant's competency whenever they arise.
- (f) **Treatment support and services:** Mental health courts connect participants to comprehensive and individualized treatment supports and services in the community. They strive to use – and increase the availability of – treatment and services that are evidence-based.
- (g) **Confidentiality:** Health and legal information should be shared in a way that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants. Information gathered as part of the participants' court-ordered treatment program or services should be safeguarded in the event that participants are returned to traditional court processing.
- (h) **Court team:** A team of criminal justice and mental health staff and service and treatment providers receives special, ongoing training and helps mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.
- (i) **Monitoring adherence to court requirements:** Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.
- (j) **Sustainability:** Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded.